

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On October 26, 2018 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed sharp pain and weakness in his lower back that shot down to his left leg and caused numbness and tingling in his left leg and foot due to repetitive factors of his federal employment, including bending to retrieve sprigs, letters, flats, and parcels, lifting heavy trays and tubs of mail, twisting and turning while delivering mail, carrying parcels, and climbing up stairs. He noted that he first realized that his condition was caused or aggravated by his federal employment on May 10, 2018. Appellant did not stop work.

In a January 17, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide a copy of appellant's position description and physical requirements of his job. It afforded both parties 30 days to respond. No additional evidence was received from either party.

By decision dated February 28, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted factors of his federal employment. It concluded, therefore, that he had not met the requirements to establish an injury as defined under FECA.

On March 26, 2019 appellant requested reconsideration *via* an appeal request form. In an accompanying statement, he contended that he sustained an injury causally related to factors of his federal employment. No additional evidence was received.

By decision dated April 9, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged,

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<sup>3</sup> *Id.*

<sup>4</sup> *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

To establish that he sustained an occupational disease in the performance of duty, appellant must submit medical evidence that establishes the presence or existence of the disease or condition for which compensation is claimed and that the diagnosed condition is causally related to the identified employment factors.<sup>10</sup> As appellant has not submitted any medical evidence, he has not established a medical diagnosis in connection with the accepted employment factors.<sup>11</sup> The Board thus finds that he has not met his burden of proof to establish his claim.

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<sup>5</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *C.L.*, Docket No. 20-0385 (issued August 5, 2020).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>12</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>13</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>14</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>15</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128 (a).

In his timely request for reconsideration, appellant submitted an appeal request form and an accompanying statement contending that he sustained an injury while in the performance of duty. His contention, however, neither showed that OWCP erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by

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<sup>12</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>13</sup> 20 C.F.R. § 10.606(b)(3); *see C.L.*, *supra* note 11; *C.C.*, Docket No. 19-1622 (issued May 28, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>14</sup> *Id.* at § 10.607(a); *see K.T.*, Docket No. 18-0927 (issued May 13, 2020). Timeliness is determined by the document receipt date (*i.e.*, "the received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>15</sup> *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>16</sup> *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *C.L.*, *supra* note 11; *C.C.*, *supra* note 13; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

OWCP. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>17</sup>

Additionally, appellant did not submit relevant and pertinent new evidence not previously considered by OWCP.<sup>18</sup> Consequently, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>19</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>17</sup> 20 C.F.R. § 10.606(b)(3); *see B.B.*, Docket No. 20-1129 (issued December 31, 2020); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008);

<sup>18</sup> *Supra* note 13.

<sup>19</sup> *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9 and February 28, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 7, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board